Filed 2/6/19 P. v. Jamerson CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. IDRIS BILAL JAMERSON, Defendant and Appellant.	A153218 (Solano County Super. Ct. No. FCR330430)

Idris Bilal Jamerson was convicted of one count of pimping and one count of pandering. He seeks reversal of the pandering conviction due to alleged evidentiary and instructional errors by the court and ineffective assistance of counsel. We affirm.

STATEMENT OF THE CASE

Appellant was charged by information filed on July 19, 2017, with one count of human trafficking to commit another crime (Pen. Code, § 236.1, subd. (b)), one count of pandering by encouraging (Pen. Code, § 266i, subd. (a)(2)), and one count of pimping (Pen. Code, § 266h, subd. (a)). The human trafficking count was dismissed on the prosecutor's motion prior to trial, and a jury found appellant guilty on the other two counts. He was sentenced to four years in prison on the pandering count and sentence on the pimping count was stayed under Penal Code section 654.

STATEMENT OF FACTS

On May 19, 2017, as part of a "prostitution sting" or "human trafficking operation," Vacaville Police Detective Stephen Lopez responded to an advertisement on backpage.com, a website used to solicit sex for money. The ad caught his attention

because the operation was focused on underage prostitution and the female pictured in the ad appeared to be a juvenile. Testifying as an expert in the areas of pimping, pandering and prostitution, Lopez described the advertisement and explained the meaning of terms it used, which he testified were "common terminology" for solicitation of sex, such as "I enjoy catering to upscale, respectful, and discreet gentlemen," "I will make sure you're comfortable and satisfied," "[c]ome explore your fantasies with me," and "discreet, unrushed, clean and safe."

The ad indicated the woman's name was Melanie. Lopez sent a text message asking if she came to Vacaville and, upon receiving an initial response from the phone number in the ad, asked about an "hour for FS." "FS," in "slang terminology used in the pimping and prostitution world," "stands for full service," meaning "sexual intercourse and oral sex." He received a response saying, "That works. An hour is 300 roses." "Roses" referred to money, slang terminology used to disguise the nature of the conversation. In further texts, Lopez and Melanie arranged to meet in around one hour.

About an hour later, in another text exchange, Lopez said he was in an apartment by the Kaiser Hospital and would text the address when Melanie was close, then when she said she was close, Lopez sent the address and gate code. Lopez alerted the officers on the surveillance and arrest teams that had been put in place.

Sergeant Jason Johnson was parked near the apartment complex where Lopez was located, watching for the arrival of the person who had been solicited through the ad. A car approached from the direction of the freeway and came up to where Johnson was parked. Johnson shined a spotlight on the car and it stopped. The car had two occupants, appellant driving and the woman from the ad in the passenger seat. As Johnson spoke to them through the open driver's side window, appellant appeared to be very nervous; his movements were jittery and he appeared to "fumble" for a reason he was at that location.

Other officers arrived at the scene, removed appellant and the passenger from the car and detained them. Appellant initially gave his name as Rasheed Jamerson and birthdate as 1994, then later said his name was actually Idris Jamerson and his birthdate was in 1996. He was wearing sweatpants, a hooded sweater and sandals with socks, and

had $608 in cash and a Motel 6 key card in his pockets. The woman, Megan C., provided a Maryland ID card, was over 18 years of age, and was wearing a short black dress with spaghetti straps, black "[s]trappy" sandals, makeup and false eyelashes. Police seized an iPhone 5 from the driver's seat and a silver Samsung cell phone from the passenger seat. The former was later determined to be appellant's and the latter Megan C.'s.

Detective Michael Miller transported appellant to the police station after his arrest.[1] Appellant was "very worried" about why he was under arrest. He said, "I don't know the bitch," and when Miller asked why he was worried about her, appellant kept saying he did not know her and did not even know her name. Asked why he was with Megan C., appellant said he was giving her a ride, she was going to give him "a little gas money" in return, and she was meeting someone to have sex. Appellant said they were coming from a Motel 6 in Fairfield and that there were other males in the hotel room but no other females. Asked what he did for work, appellant said he was a rapper and used the rapper name Drissy Bo. Miller subsequently determined that the motel room was registered in Megan C.'s name and the key card in appellant's possession opened the room.

Lopez spoke with appellant at the police station after reminding him of his rights, of which appellant had been advised when he was arrested. The interview was recorded and played for the jury. When asked how he knew Megan C., he said, "I don't know her like that." Asked, "like what?" appellant replied, "I really don't know. I really don't know her." He said, "I can't tell you nothing about her age, or nothin' " and said he had met her on Instagram, she told him to come to the motel in Fairfield and "she had some gas money to go somewhere."

[1] Miller testified that when the decision was made to arrest appellant, "he appeared to have lost consciousness and collapsed on the ground between the two cars." The officers told him to stand up, picked him up and helped him to the car, but were not concerned because appellant never lost consciousness and "kept talking the whole time." Based on his prior experience, Miller found the behavior suspicious.

Searching Megan C.'s Samsung cell phone, the police found an Instagram conversation from April 29, 2017, with someone named "Drissy_Boo" or "Drissy_Bo," as well as text conversations with someone named "Drissy." The Instagram conversation began with Drissy_Bo asking, " 'Where are you at?' " The response was " '[i]n the valley,' " and Drissy_Bo replied, " 'Trying to come get you ma.' " He asked, " 'Where yo nigga at?' " and she responded, " 'I don't have a nigga . . . then come to the valley, then.' " He asks, " 'How old is you? Is you ready to be down?' " Miller, who also testified as an expert in the areas of pimping, pandering and prostitution, testified that the second question was "getting more specific to human trafficking," which became more clear when Megan C. asked, " 'down for what?' " and Drissy_Bo replied, " 'down for yo crown' with a crown emoji." This phrase and emoji are "specific to commercial . . . sexual exploitation": The crown signifies that the "pimp is the king," asking "[a]re you ready to be down and support me as your king?" Another message said, "Teamwork make the dream work" (with emojis of high heels and bags of money), to which she replied, " 'Ain't that the truth.' " Miller testified that the "teamwork" phrase was "almost like a bumper sticker for human trafficking," so common that it had "Internet memes"; the high heels represented prostitutes wearing fancy shoes; and the money meant "wear your high heels to come make some money."

In what Miller testified was a "vetting thing," Drissy_Bo texted, " 'What you be doin out there? We can hit state to state by you do dis shit for real. I don't fuck with pretenders.' " Miller testified that pimps don't want girlfriends, they want "girls to work for them," and a pimp will reach out to many different girls "because he doesn't want the ones that are going to waste his time." Megan C. responded, " 'I hustle' " and asked " 'state to state for what?' " He said, " 'To get some money,' " and to her question, " 'Get money how?' " he replied " 'Bust dates, how else?' " According to Miller, while "hustle" could mean "anything," "bust dates" was a phrase specific to prostitution.

Megan C. said, " 'I ain't with that pimpin' shit' " and Drissy_Bo replied, " 'Well, then what do you do to get money? Are you in them telly?' "—meaning "you are in a hotel." Megan C. said, " 'I trap' "—another way of saying "I am out making my

money"—and he asked, " 'So you don't wanna pay no nigga?' " This, Miller testified, meant "you don't want to have a pimp?" When Megan C. asked, " 'How am I going to get money? Selling pussy?' " Drissy_Bo replied, " 'Not exactly. I just need a bitch that's gon' listen. I know how to get it. You just gotta be willing.' " Miller testified this was "classic pimp-to-prostitute relationship. [¶] I'm not trying to be your boyfriend. I just need an employee." Drissy_Bo asked if she was ready to "hit the road and get some bands"—"bands" being a slang term for a stack of money. He told Megan C., "It ain't gotta be pimping, ho'ing. It could be us just getting money, living life, minding our own. This time 'pose to be the best. Don't knock it until you try." Miller explained that pimps contacting potential prostitutes will often try to attract them "without letting them know what their real intent is . . . almost like they're trying to attract them as they would another girl who is looking for attention." Megan C. said, " 'I am trying to tell you that shit is not for me. If I ain't attracted to someone, I don't want them anywhere near me.' " He asked for her number, saying " 'I can have yo mindset somewhere else.' " According to Miller, "mindset" is "another pimp bumper sticker," referring to manipulation of a person's mind, to make the victim believe "I am your savior and I am your king and . . . we together, as a team, are going to go make this money."

In another conversation on May 11, Megan C. said she was in Fairfield and the two exchanged messages about meeting up.

Miller described an exchange of text messages on May 19, the day of the police operation, between Megan C.'s cell phone and appellant's, the number for which was listed in Megan C.'s contacts as "Drissy Bo." Among these, Megan C. said, " 'I just did a five-minute QK,' " he asked, " 'How much,' " she replied, " '80 roses,' " he asked " 'Anything else coming in,' " and she responded, " 'I think someone else might be coming. I'm waiting for them to text me. And then I have a guy that wants an outcall.' " Miller testified that "five-minute QK" meant "[s]he saw a sexual client for five minutes," "80 roses" meant $80, and "based on what I've done hundreds of times, this is now no longer a relationship. Hey, let's do some stuff together. Let's make some money together. Let's go on the road together. This is now business. We're working now. This

is work. This is what I did. This is how much I made. And this is what I got planned coming up." Further texts referred to Megan C. having a "QV in another 15 minutes" (referring to a "quick visit"), a "QV in American Canyon" around 5 and a "QV incall at 5:30." Drissy Bo told Megan C., " 'Get ready. See how many you can line up. It's going to be a long night.' " She said, " 'I don't wanna get ready yet. My makeup's done. I'm going to shower and redo after a couple more incalls. Can I use a little bit of this to get something to eat from McDonald's or something?' " He replied, " 'Yeah. Don't spend hella. . . . Try to get one more incall . . . before I come out there.' " In subsequent messages, Drissy_Bo asked " 'how much you got?' " and Megan C. replied " '374 because I got food earlier,' " which Miller testified meant she had made total of $380 but used $6 to get food. Megan C. texted, " 'I'm about ta get this 80 real quick' " and then " 'I have an outcall for 300 roses in an hour.' " The first of these messages meant she was about to have an $80 date and the second, based on the time stamp, was referring to the "date" with Detective Lopez.

In another exchange that Miller viewed as indicating a pimp/prostitute relationship, Megan C. asked Drissy Bo to bring her some "Molly" (the drug Ecstasy or MDMA); he asked, " 'you need that shit' " and said, " 'I want you to get that shit when you on the road . . . [t]he less the better' "; she said, " 'I'm getting sore' "; and he told her, " 'Take a bath. I will get you one if you really need it, though.' " Miller testified that prostitutes request mild altering drugs to "deaden the physical and emotional pain" of constantly having sex, but pimps do not like their prostitutes to be under the influence of drugs because it often lessens their responses to clients, resulting in less income.

Miller testified that he reviewed a rap video posted on YouTube on April 21, 2017, in which appellant raps about earning money by prostituting girls. Asked whether the video played into his opinion regarding pimping activity, Miller said, "It confirmed that Drissy, number one, was this person. Well, that Mr. Jamerson, who said he was Drissy, is the person in the video that's titled as sung by Drissy_Bo. And then the words that he was using, the lyrics that he was using, were that he is earning money based on prostituting girls." An approximately 50-second recording was played for the jury over

defense counsel's objection. Miller testified that certain phrases in the recording were specific to prostitution and pimping. For example, in "I'm out here on the blade trying to knock a new bitch," "bitch" means prostitute and "blade" refers to the location for "open air human trafficking, open air commercial sex exploitation" in which "[j]ohns" drive up in a car and prostitutes on the sidewalk hail the car and negotiate sex for money. "[C]hasing blue strips" refers to the new $100 bill, which has a blue strip on it; "They ask me how I get what I got. I told them about a bitch," means "I get what I have because this prostitute gives me money"; "This bitch want a boyfriend. Well, bitch, I want a ho" means "this world is about business. It's not about boyfriend and girlfriend."

Miller opined that appellant was involved in pandering activities with Megan C. based on the Instagram messages encouraging her to work as a prostitute for him, his driving her to a prostitution date where she was going to meet Detective Lopez, and the text messages between appellant's and Megan C.'s cell phones. Miller further opined that appellant was Megan C.'s pimp, based on the initial Instagram messages, the accounting for dates and money, her asking and him granting permission to use the money she made, and the $600 found in appellant's possession when he was arrested, which Miller viewed as consistent with the amount discussed in the text messages.

DISCUSSION

Appellant's arguments on appeal all relate to his conviction of pandering. Penal Code section 266i, subdivision (a)(2), under which appellant was charged, provides that "any person who does any of the following is guilty of pandering . . . . [¶] . . . [¶] By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute." The jury was instructed that in order to find appellant guilty of this offense, the People were required to prove that appellant "used promises to encourage Megan C[.] to become a prostitute, although the defendant's efforts need not have been successful" and that he "intended to influence Megan C[.] to

be a prostitute." (CALCRIM No. 1151.) It was further instructed that it did not matter whether Megan C. was a prostitute already.[2]

I.

Appellant contends the trial court abused its discretion in admitting the rap video, which was played for the jury over appellant's objections that it lacked relevance, was more prejudicial than probative, and lacked foundation. We review the trial court's rulings for abuse of discretion. (*People v. Kipp* (2001) 26 Cal.4th 1100, 1123 [relevance]; *People v. Jablonski* (2006) 37 Cal.4th 774, 805 [relative probativeness and prejudice]; *People v. Lucas* (1995) 12 Cal.4th 415, 466 [foundation].) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

" 'Evidence is substantially more prejudicial than probative (see Evid. Code, § 352) if, broadly stated, it poses an intolerable "risk to the fairness of the proceedings or the reliability of the outcome" (*People v. Alvarez* [(1996)] 14 Cal.4th [155], 204, fn. 14).' (*People v. Waidla* (2000) 22 Cal.4th 690, 724.)" (*People v. Jablonski, supra,* 37 Cal.4th at p. 805.) " 'The admission of relevant evidence will not offend due process unless the evidence is so prejudicial as to render the defendant's trial fundamentally unfair.' " (*Jablonski*, at p. 805, quoting *People v. Falsetta* (1999) 21 Cal.4th 903, 913.)

Appellant argues that there was no permissible inference to be drawn from the video. He maintains that rap music, as a form of art, is a form of expression not meant to be taken literally (*In re George T.* (2004) 33 Cal.4th 620, 636–637 [poetry, as "medium of expression" is "inherently ambiguous"; poem about school shooting insufficiently

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[2] Pimping, the conviction appellant is not challenging on this appeal, is defined in Penal Code section 266k: "any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution . . . is guilty of pimping . . . ." The jury was instructed that in order to find appellant guilty of this offense, the prosecution was required to prove that appellant "knew that Megan C[.] was a prostitute" and that "[t]he money/proceeds that Megan C[.] earned as a prostitute supported [appellant], in whole or in part." (CALCRIM No. 1150.)

unequivocal to constitute criminal threat]), and there was no evidence that the video was "intended, by anyone, to be taken as some sort of autobiographical expression" by appellant. There was no evidence as to when the video was made, who wrote the lyrics or who posted it. Appellant argues that because the video was posted prior to the first date on which the evidence showed contact between him and Megan C., it could not be taken to refer to their relationship and therefore could only suggest that he likely was guilty of pandering and pimping with Megan C. because he engaged in such conduct generally.

We need not resolve the propriety of admitting the video into evidence, as we are convinced any error was harmless. The primary evidence of pandering was the text communications between appellant and Megan C., interpreted with the assistance of Miller's testimony. Miller explained to the jury how appellant's messages to Megan C. reflected a "classic pimp-to-prostitute relationship," with appellant "vetting" Megan C. and using recognizable methods to draw her into working for him. The meaning of these messages from April 2017 was confirmed by the clear evidence that a month later Megan C. was in fact working as a prostitute with appellant as her pimp.

Appellant argues that the evidence of pandering was not clear—that the text messages were ambiguous and could have been read as appellant simply attempting to start a relationship with Megan C. He argues there was no evidence he promised anything to Megan C., helped her get to the Bay Area or placed the ads for her, and some of his messages said he was not necessarily talking about prostitution.

The ambiguity appellant sees in the text communications comes from taking them at face value: Appellant never expressly "promised" to do anything, for example, and he said he was "[n]ot exactly" talking about "[s]elling pussy" and "[i]t ain't gotta be pimping, ho'ing." Miller explained, based on his knowledge and experience as an expert in the culture of pimping and prostitution, how these words actually reflected a tactic used by pimps to draw women in by disguising their intentions. The jury was not required to accept his testimony as true or correct, and was so instructed. (CALCRIM No. 332.) But the evidence that Megan C. did in fact come to work as a prostitute for

appellant—vividly demonstrated, for example, by the conversations in which she discussed the scheduling of her "dates," asked permission to spend some of the money she earned on food, and accounted to appellant for the money she earned and spent—was compelling confirmation of Miller's interpretation. To the extent there was any ambiguity in the conversations, this confirming evidence was far stronger than the video, which defense counsel was at least able to argue was "satire," just a performance aimed at generating fans on YouTube to become a successful rapper.[3] And while there is no evidence appellant expressly told Megan C. he "promised" anything, the promise implicit in his messages is clear: "I know how to make money and you will make money if you come to work for me." Read as a whole there is no mistaking that the entire communication was about working together to make money through prostitution, not starting a relationship.

Appellant also argues he was prejudiced because the prosecutor improperly used the video as propensity evidence, stating in closing argument that the video "shows the lifestyle that he's endorsing. It is the lifestyle that he knows. It's what he does. So he's very comfortable with the concept of . . . going out on the blade and recruiting . . . new women to come work for him. He's out there chasing the blue strips. He's out there. How does he make his money? He's going to tell you about a bitch. He's got women working for him in the context of this video, and that is how he gets his money."

While the prosecutor did argue that the video showed appellant was comfortable in a lifestyle of pimping and prostitution, it is not clear she was arguing, as appellant maintains, that he must have engaged in pimping and pandering with Megan C. because he had done so on other occasions or endorsed the lifestyle. The prosecutor specifically tied her comments about the video to the evidence of communications between appellant

[3] As an indicator that the video was not of overwhelming evidentiary significance, Miller did not include it among the matters he relied upon in forming his opinions about appellant's activities, despite the fact that he was asked to identify these matters immediately after his testimony about the content of the video.

and Megan C.: "So again, that's perfectly consistent with his text messages.· It's perfectly consistent with the lifestyle that he's adopted for himself and that we can see playing out with Miss C[]. It's to entice, entice, entice. And then boom, we're all business. Even in the lyrics there, she wants a boyfriend. Well, bitch, I want a ho.· You know, I'm not looking to have a romantic relationship with anyone or with you in particular. I want you to come work for me. This is business." The prosecutor's point was that the lyrics in the video showed that appellant understood the words used in the messages in the same way Miller explained them to the jury.

Appellant's additional argument, that the video was prejudicial due to the lyrics repeatedly referencing "murder," is not convincing. As reflected in the transcript provided to the jury, the lyrics rapped by appellant in the video included the following: "Murda man. All my niggas we say Murda mans. I'll let the Murda mans talk about the Murda bands." The parties assume "Murda" means "murder" and would have been so understood by the jury. The term was never defined at trial, nor was this part of the lyrics commented upon in any way by any witness or counsel. Given that all the testimony and argument concerning the video was about the lyrics related to prostitution and pimping, the likelihood that jurors' passions would have been unduly inflamed by the unexplained references to "murda" is surely minimal, especially in light of the court's instruction not to let bias, sympathy or prejudice influence their decision.

In sum, if there was any error in admitting the video, whether viewed as evidentiary error subject to review under *People v. Watson* (1956) 46 Cal.2d 818, 836, or a due process violation requiring review under *Chapman v. California* (1967) 386 U.S. 18, we are convinced the verdict would have been no different if the video had not been admitted.

II.

Appellant contends the trial court committed reversible error in failing to give a unanimity instruction with respect to the charge of pandering.

Because a jury verdict in a criminal case must be unanimous, "when the evidence suggests more than one discrete crime, either the prosecution must elect among the

crimes or the court must require the jury to agree on the same criminal act." (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) This requirement of unanimity as to the criminal act " 'is intended to eliminate the danger that the defendant will be convicted even though there is no single offense which all the jurors agree the defendant committed.' " (*Ibid.*, quoting *People v. Sutherland* (1993) 17 Cal.App.4th 602, 612.)

As we have said, the jury was instructed that in order to find appellant guilty of pandering, it had to find he "used promises to encourage Megan C[.] to become a prostitute" and "intended to influence" her to do so. As appellant recognizes, the prosecutor argued that appellant encouraged Megan C. to become a prostitute by promising her he would help her make money. He argues, however, that neither the actual exchange of messages nor Miller's interpretation of their implication pointed to any specific promises, and that there were at least two other "evidentiary bases" upon which the jury could have relied to find appellant guilty of pandering even if it did not find clear evidence that he made any promises. First, he urges, the jury could have relied upon the fact that Megan C. ended up working as a prostitute for appellant to conclude he must have induced her to do so. Second, he suggests the jury could have concluded he pandered Megan C. because the rap video showed him to be "the 'kind of person' who would engage in pandering."

Most of appellant's argument is directed at convincing us not to follow *People v. Dell* (1991) 232 Cal.App.3d 248, 265–266, which held that no unanimity instruction was necessary under the "continuous criminal conduct" "exception to the unanimity instruction requirement," because "both pimping and pandering have been held to be crimes of a continuous ongoing nature." Appellant argues *Dell* stated its point too broadly, and pandering by encouragement can be established on the basis of a single occasion. Respondent does not disagree on the latter point; in fact, respondent states that appellant was not charged with pandering as a single ongoing offense.

But the point is irrelevant to our resolution of the present case, as the jury was not presented with multiple discrete instances of pandering allowing disagreement among jurors as to which crime appellant committed. The alternative "evidentiary bases" for

conviction appellant postulates, by his own description, would have allowed the jury to find him guilty only by ignoring the instruction that to establish pandering, the prosecution had to prove appellant used promises to encourage Megan C. to become a prostitute. " 'Jurors are presumed to understand and follow the court's instructions.' " (*People v. Young* (2005) 34 Cal.4th 1149, 1214, quoting (*People v. Holt* (1997) 15 Cal.4th 619, 662.) The court was not required to give a unanimity instruction in anticipation of the possibility that jurors might ignore its instructions and find guilt based upon a factual scenario that did not satisfy the elements of the offense. The only evidence that appellant used promises to encourage Megan C. into prostitution was the communication between appellant and Megan C. through Instagram and text messages, which was presented to the jury as a whole; there was no suggestion that appellant committed an act of pandering by use of one or another individual promise or set of promises and a separate and distinct act of pandering by means of a different promise or set of promises.

III.

Appellant argues that defense counsel was ineffective in failing to object to various questions that asked Detective Miller to speculate about appellant's subjective intent, and to a question that asked Miller to opine on whether appellant was guilty of pandering.

To prevail on this claim, appellant " 'must demonstrate that (1) counsel's representation was deficient in falling below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient representation subjected the petitioner to prejudice, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the petitioner. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *In re Wilson* (1992) 3 Cal.4th 945, 950.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Strickland*, . . . at p. 694.)' (*In re Neely* (1993) 6 Cal.4th 901, 908-909.)" (*In re Jones* (1996) 13 Cal.4th 552, 561.) There is "a 'strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance' " (*People v.*

Lucas, supra, 12 Cal.4th at p. 436, quoting *Strickland*, at p. 689) and on direct appeal we will reverse only if the record " ' "affirmatively discloses that counsel had no rational tactical purpose for [his or her] act or omission." ' " (*Lucas,* at p. 437, quoting *People v. Zapien* (1993) 4 Cal.4th 929, 980.)

" 'California law permits a person with "special knowledge, skill, experience, training, or education" in a particular field to qualify as an expert witness (Evid. Code, § 720) and to give testimony in the form of an opinion (*id*., § 801).' (*People v. Gardeley* (1996) 14 Cal.4th 605, 617.) An expert's opinion must be '[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.' (Evid. Code, § 801, subd. (a).) 'Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.' (*Id*., § 805.)

"However, ' "[a] witness may not express an opinion on a defendant's guilt. [Citations.] The reason for this rule is not because guilt is the ultimate issue of fact for the jury, as opinion testimony often goes to the ultimate issue. [Citations.] 'Rather, opinions on guilt or innocence are inadmissible because they are of no assistance to the trier of fact. To put it another way, the trier of fact is as competent as the witness to weigh the evidence and draw a conclusion on the issue of guilt.' " ' (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.)" (*People v. Leonard* (2014) 228 Cal.App.4th 465, 493 (*Leonard*).)

The general culture and habits of pimps and prostitutes is sufficiently beyond common experience that expert testimony on this subject is admissible. (*Leonard, supra,* 228 Cal.App.4th at p. 492 & fn. 9; see *People v. Gardeley, supra,* 14 Cal.4th at p. 617, disapproved on other grounds in *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13 [expert testimony on criminal street gang culture and habits]). An expert witness may not testify, however, that a "specific individual had specific knowledge or possessed a specific intent." (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 658, disapproved on other grounds in *People v. Vang, supra,* 52 Cal.4th at p 1047.) We review the trial court's decision to admit expert testimony for abuse of discretion. (*Leonard*, at p. 493.)

In the questions at issue here, Detective Miller was asked whether particular portions of the Instagram and text conversations between appellant and Megan C. had significance to him and explained how he saw the initial exchange as indicating that the two knew each other, which contradicted what appellant had told the police. Miller then described how the content of the messages, which at first "could just be the way that some people talk," started to appear "specific to human trafficking." Many of the questions and answers appellant presents as objectionable involved Miller telling the jury that particular words or phrases were "specific to" or had a specific meaning in the world of pimping and prostitution, such as "ready to be down," "down for yo crown," "teamwork make the dream work," emojis for money and high heels and "bust dates." Others were presented as illustrating what Miller described as common practices, such as "[w]e can hit state to state by you do dis shit for real. I don't fuck with pretenders" as "vetting" to determine whether a pimp is wasting his time. This sort of explanatory testimony related information about pimp and prostitution culture generally, not appellant's actual subjective knowledge and intent. (*Leonard*, *supra*, 228 Cal.App.4th at p. 493, fn. 9.)[4] Even an expert's expression of opinion as to the defendant's mental state (an element of the offense) has been found permissible where based on the expert's interpretation of "gang slang" used in the defendant's telephone conversations. (*People*

[4] *Leonard* found the trial court abused its discretion in permitting an expert witness who had explained the meaning of terms used to describe two different types of pimps to give the jury his opinion on which type the defendant was. (*Leonard*, *supra*, 228 Cal.App.4th at pp. 492–493.) This testimony was inadmissible because, after the terms were explained, the jury was as qualified as the witness to decide what the evidence showed as to which term fit the defendant. (*Id.* at p. 493.) After stating that this testimony, as well as testimony as to what " 'patterns of behavior in pimping' " were shown by the evidence, "could reasonably be interpreted as unhelpful comments on [the defendant's] guilt or innocence," the court noted: "We do not place Detective Hunter's. testimony on [the defendant's] social media postings and style in this category. Detective Hunter's testimony regarding the meaning of this evidence, in the culture of pimping and pandering, did not comment on [the defendant's] guilt or innocence." (*Id.* at p. 493 & fn. 9.)

v. Roberts (2010) 184 Cal.App.4th 1149, 1193–1194.) Defense counsel's failure to object was reasonable.

Appellant takes particular exception to Miller's testimony that when appellant said, "you don't wanna pay no nigga[,]" he was referring to her not wanting to pay a pimp. Miller's testimony that "he's basically asking her, so you want to be a prostitute, but . . . [y]ou just don't want to have a manager" came closer to appellant's characterization of him having told the jury what appellant " 'really' meant by this or that expression." Still, it was clear that Miller was explaining the meaning carried by the words appellant used "in this context"—the culture of pimping and prostitution. Miller testified: "Basically, in other words, you make money, you just don't want to have a pimp. You could take—in this context, you could take out this word, 'nigga,' and put in 'pimp' in this context." Counsel could reasonably have concluded that the jury would understand this testimony as equivalent to the rest of Miller's explanations.

Miller's expression of his opinion that appellant engaged in pandering activities with Megan C. is more problematic. While an expert's opinion may "embrace[] the ultimate issue to be decided by the trier of fact" (Evid. Code, § 805), Miller's testimony that appellant engaged in pandering activities with Megan C. was tantamount to a statement that appellant was guilty of one of the charged offenses. (See *People v Romo* (2016) 248 Cal.App,4th 682, 697 [expert testimony that defendant charged with unlawfully importing controlled substance was not "blind mule" (i.e., unaware of drugs) admissible because not opinion on guilt or innocence].)

Assuming counsel could not have had a rational tactical reason for failing to object to this question and testimony, however, appellant fails to demonstrate a reasonable probability he would have obtained a more favorable outcome if Miller had been prevented from stating this opinion. First, Miller's opinion would have been obvious to the jury if he had not been asked to explicitly state it. As we have said, in testifying about the significance of the various text communications as indicators of the context in which they were made and their meaning within that context, Miller told the jury that appellant's messages to Megan C. reflected a "classic pimp-to-prostitute relationship,"

that he was "vetting" her and using common methods to convince her to work for him. Second, the evidence of the April communications, especially coupled with the evidence that a month later Megan C. was in fact working as a prostitute with appellant as her pimp, clearly establishes the elements of the offense of pandering. There is no reasonable probability the jury would have reached a different verdict if it had not heard Miller state his opinion that appellant pandered Megan C.

Appellant's argument to the contrary is based on his view that the evidence of pandering was ambiguous and but was "powerful[ly] . . . repaired and reframed" by Miller—as illustrated, for example, by the messages that appellant sees as indicating he was *not* encouraging Megan C. to work as a prostitute for him (saying he was "[n]ot exactly" talking about "selling pussy" and "it ain't gotta be pimping, ho'ing"). Again, Miller's explanation of how these words fit into the overall conversation removed any ambiguity. Together with the evidence of Megan C.'s subsequent work as a prostitute for appellant, the Instagram and text messages clearly establish the elements of pandering.

There was no prejudicial error.

DISPOSITION

The judgment is affirmed.

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Kline, P.J.

We concur:

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Stewart, J.

_____
Miller, J.

People v. Jamerson (A153218)